NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 721 of 2014

- Branch Manager Sri Ram General Insurance Company Limited E-8 RICCO Industrial Area Sitapura, Jaipur (Rajasthan).

---- Appellant

Versus

1. Jagdish Vishwas S/o Late Satish Vishwas aged about 52 near about Occupation labour,

2. Smt. Vinodni Vishws W/o Jagdish Vishwas D/o Jagdish Vishwas aged about 50 years,

3. Ku. Ruma Vishwas D/o Jagdish Vishwas aged about 25 years,

   All resident colonies Fundurdihari (Bangalipara) Thana Dehat Gandhi Nagar, Ambikpur, Distt.- Sarguja. (Claimants)

4. Ram Balwant Kushwa S/o Rambachan Kuchwa aged about 23 years, through Dalsinagar Singh Occupation Driver, Resident Gram Katyari Thana madanpur, Distt.- Devaria (U.P.) hall mukam Renikut (Transport Nagar) Thana Pipari Sobhard (U.P.).

   (Driver of Truck No. M.P. 09/K.D./8368).

5. Dal Singar Kushwaha S/o Amar Bahadur Singh aged about 72 years Occupation owner of the vehicle, Resident Renicut (Transport Nagar) Thana Pipari Distt.- Sonbhadra (U.P.)

   (Owner of Truck No. M.P.09/K.D./8368).

---- Respondents

For Appellant	: Shri Deepak Gupta, Advocate
For Respondents No. 1 to 3	: Shri Anil Pandey, Advocate.
For Respondent Nos. 5 & 6	: None

MAC No. 1380 of 2015

1. Jagdish Vishwas W/o Late Satish Vishwas aged about 52 years Occupation- Laborer,

2. Smt. Vinodani Vishwas W/o Shri Jagdish Vishwas aged about 50 years Occupation- House wife,

3. Ku. Ruma Vishwas D/o Shri Jagdish Vishwas aged about 25 years Occupation- Student,

All are R/o Muhala- Phundurdihari (Bangalipara) P.S.- Dehat Gandhinagar Ambikapur Dist.- Surguja (C.G.).

---- Appellants/Claimants

Versus

1. Ram Balwant Kushwaha S/o Rambachan Kushwaha aged bout 23 year through Dalsinagar Singh Occupation- Driver R/o Village- Katiyari P.S.- Madanpur Distt.- Dewariya (U.P.) Present Adress- Renukut (Transport Nagar) P.S.- Pipari Distt.- Sonbhadr (U.P.).

2. Dalsingar Singh S/o Shri Amar Bahadur Singh aged about 72 year Occupation- owner Occupation- Driver R/o Village- Renukut (Transport Nagar) P.S.- pipari Distt.- Sonbhadra (U.P.).

3. Branch Manager Shriram General Insurance Company Ltd. Branch Office E/8 Richa Industrial Area Sitapur Jaipur (Rajsthan).

---- Respondents

For Appellants : Shri Anil Pandey, Advocate
For Respondent Nos. 1 & 2. : None
For Respondent No. 3 : Shri Deepak Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J
Judgment On Board

08/03/2019

Heard on IA No. 1 (in MAC No. 1380/2015), application for condonation of delay of 38 days in filing the MAC.

2. For the reason mentioned in the application, which is duly supported by the affidavit, the same is allowed and delay in filing the MAC is condoned.

3. As both these appeals filed by the Insurance Company & the claimants under Section 173 of the Motor Vehicles Act arising out of the common award dated 16.05.2014 passed by the Motor Accident Claims Tribunal, Sarguja (Ambikapur) (C.G.) in claim case No. 166/2012, they are heard together and are being disposed of by this common judgment.

4. Appellant/Insurance Company has filed the appeal being MAC No. 721/2014 challenging the liability fastened upon it on the grounds that the driver of the offending vehicle did not have valid and effective driving licence at the time of accident and also challenging the quantum part of the award *whereas* appellants/claimants, who are the parents & sister of the deceased- Tarun Vishwas, have filed the appeal being MAC No. 1380/2015 seeking enhancement of the amount of compensation under the award.

5. On claim petition being filed by the claimants, who are parents & sister of the deceased- Tarun Vishwas, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award to the tune of Rs. 1570724/- alongwith interest @ 6% per annum from the date of filing of claim petition till its actual payment in favour of the claimants, fastening liability of payment of compensation upon the non-applicants jointly and severally.

6. As per claim petition, on 29.09.2012 at around 4.00 pm, when deceased namely Tarun Vishwas along with one familiar person Smt. Gaury Haldar was going from Balrampur to Ambikapur on his own motorcycle bearing registration No. CG-15D/7752, near village Semersot, Non-applicant No. 1/driver- Ram Balvant Kushwaha by

driving the offending vehicle truck bearing registration No. M.P.09/KD/8368 in a rash and negligent manner, dashed the motorcycle of the deceased as a result thereof, deceased -Tarun Vishwas sustained grievous injuries and during treatment he died at Jeevan Jyoti Hospital at Ambikapur.

7. Learned counsel for the appellant/Insurance Company in MAC No. 721/2014 submits that the Claims Tribunal has erred in fastening liability upon the Insurance Company because the driver was not having valid & effective driving licence at the time of accident. He further submits that without any cogent evidence & document learned Tribunal awarded maximum amount of compensation to the claimants which may be suitably reduced. Thus, the finding recorded by the Tribunal that the Appellant/Insurance Company is liable to pay compensation to the claimants is liable to be set aside.

8. Shri Anil Pandey, learned counsel appearing for the appellants/claimants in MAC No. 1380/2015 submits that the Claims Tribunal after considering all the relevant aspects of the matters has rightly fastened liability on the Insurance Company as it could not establish the violation of policy conditions.

9. Learned counsel for the claimants further submits that no amount towards future prospect was granted to the claimants looking to the age of deceased i.e. 23 years at the time of accident, therefore, 50% future prospect should be added into the income of the deceased. The amounts toward conventional head is also on the lower side which may be suitably enhanced.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

10. Learned counsel for the Insurance Company also opposes the contention made by learned counsel for the claimants regarding enhancement of compensation.

11. Heard learned counsel for the parties and perused the material available on record and the award impugned.

12. So far as MAC No.721/2014 filed by Insurance Company is concerned, as per seizure memo (Ex P/5), driving licence of driver of the offending vehicle was seized by the Investigating Officer under Crime No. 108/2012 and it is valid till 2013. No evidence whatsoever has been adduced by the Insurance Company that the driving licence so seized by the Police was not valid and effective on the date of accident. As such the Tribunal was justified in holding that the Insurance Company has failed to prove any breach of policy conditions on the part of the driver and owner of the offending vehicle and fastening liability on the Insurance Company to pay compensation to the claimants. Therefore, Learned Claims Tribunal is absolutely justified in fastening the liability upon the Insurance Company to pay compensation to the claimants, which does not call for any interference.

13. In **MAC 1380/2015**: as regards the quantum of compensation, considering the salary slips Ex.P/8 & Ex. P/9, the Tribunal assessed the income of the deceased. The said salary slips have been duly

proved by the claimant and as such the Tribunal was justified in assessing income on the basis of these documents. Further considering the age of the deceased i.e. 23 years, nature of job as permanent salary paid employee, dependency and In view of the judgments of the Supreme Court in the matter of ***Smt. Sarla Verma and Pranay Sethi, (Supra)***, I propose to re-compute the amount of compensation as under :-

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs.14,428x12= Rs. 173136/- per annum
02.	50% of above to be added towards future prospects	Rs.173136+ 86568= Rs. 259704/-
03.	After 1/2th deduction towards personal and living expenses of the deceased	Rs.129852/-
04.	Multiplier of 18 to be applied	Rs.23,37,336/-
05.	Towards loss of estate, funeral expenses & loss of consortium	Rs.30,000/-
06	**Total compensation**	Rs.23,67,336/-

Since the Tribunal has already awarded Rs.1570724/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.7,96,612/- along with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

14. In the result:

- MAC No. **721 of 2014** preferred by the insurance company being without any substance is hereby dismissed.

- **MAC No. 1380/2015** filed by the claimant is allowed in part.

Sd/-

(Gautam Chourdiya)
Judge

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